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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,255	02/10/2005	John Richard Salvage	09375.0037USWO	9893
23552 7590 09/13/2007 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER MCGRAW, TREVOR EDWIN	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 09/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/524,255

Applicant(s)

SALVAGE, JOHN RICHARD

Examiner

Trevor McGraw

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-30, 32-42 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 24-30, 32-42 and 44 is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 42 is rejected under 35 U.S.C. 102(b) as being anticipated by Jouillat (US 5,388,727).

In regard to Claim 42, Jouillat (5,388,727) teaches that it is known to have a spraying dispenser that comprises a vessel (20) that has an open end (Column 3, Lines 12-41) that has a neck portion provided with a collar that is more rigid than the collar (Figures 1, 3, and 7) where the collar is adapted to seal with a seal **element** (Column 4, Lines 3-29) that is provided between **a dispensing mechanism** of the spray dispenser and the vessel where the vessel is manufactured by welding at least two sheets of plastic material together (Column 3, Lines 13-26) where the vessel has a collar inserted into the neck portion and is welded around the circumference of the collar and the welding is performed a plurality times by a welding apparatus where the orientation of the collar and neck portion varies as the weld is completed (Column 4, Line 30 – Column 6, Line 10).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-27 and 32-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Kock et al. (US 5,377,875).

In regard to Claims 24-27 and 32-41, Kock et al. (5,377,875) teaches a spray dispenser (Figures 2 and 5) for dispensing liquids where the dispenser has a collapsible liquid impermeable vessel (22) that can be filled at least partially with a liquid having an open end (Figure 2 and 5) comprising a neck portion with a collar that is more rigid than the vessel where an extraction means (Column 2 Lines 15-31) for extracting liquid from the flexible vessel **that is substantially cylindrical having a closed, convex bottom and is capable of being made of two sheets of plastic material with a seam between two sheets** to dispense the liquid as a spray and a sealing means **element** (50) arranged in a manner between the extraction means and the vessel where the sealing means **element** is around so that the collar of the vessel engages with the sealing means **element**.

The vessel (22) is substantially sealed to the **dispensing mechanism (182)** and airflow into the flexible vessel is substantially inhibited (Figure 5) having the sealing means **element** and extraction means arrange so that the **dispensing mechanism** is operable to dispense liquid from the vessel while the sealing means **element** is in a sealing position where the collar has a circumference that is formed separately from the neck portion (Figure 2) and joined around the collar circumference where the collar is inserted into a neck portion (Figure 5) and where the vessel is made of an inert plastic

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material (Column 10, Line 14-32; the collar and neck are made of the same material; Figure 2 and 5) where the **dispensing mechanism** includes a dispensing line that extends through the seal means **element** into the vessel where the dispensing line is gripped in sealing engagement with a bore through the seal means (Figure 5) where the vessel collapses from an expanded state to a collapsed state as liquid is extracted from the vessel (Column 9, Lines 54-Column 10 line 4) and the spraying dispenser further has a support means for supporting the vessel (Figure 5, 77, 78, 52) on a support neck that defines an opening for locating the **dispensing mechanism** and the support neck is configured to cooperate in sealing engagement with the vessel where the collar has an annular lip that rests on the support neck of a support means which has a vent to permit air instead the support means and external of the vessel so as to permit ambient atmospheric pressure conditions.

Kock et al. further teaches a spray dispenser with a bung sealing or flange arrangement (71, 41,55) that has an aperture through it where the bung is arranged in sealing position (Figure 5 and 8) between a **pump dispenser** trigger assembly (70,182) that dispenses a liquid **in the form of a spray (column 9, line 54 thru column 10, line 4)** from the vessel and a vessel where the bung aperture is in fluid communication with a dip tube where a collar of the vessel (Figure 5) is substantially sealed to the trigger assembly (70) and air access to the vessel is prohibited.

Kock et al. additionally teaches where a support container (52) is provided with a support neck (Figure 5) and cooperates in a sealing manner with the vessel where the collar has an annular lip that rests on the support neck of the support container where

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the support container has a vent that allows air inside the support container but external of the vessel.

Kock et al. as taught and described above fails to explicitly teach where the bag is made of two sheets. However, Applicant does not specify that making the bag of two plastic sheets provides any particular benefit to the present invention and is not for any particular purpose or solves a stated problem. The selection of a bag made of two plastic sheets with a seam is a mere obvious design choice. As such, it would have been obvious to one having ordinary skill in the art.

Claims 24, 28-30 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kock et al. (US 5,377,875) in view of Jouillat (US 5,388,727).

In regard to Claims 24 and 28-30, Kock et al. as described and taught above fails to teach where the collar and neck portion arrangement are welded together around the full collar circumference where welding the collar is performed a plurality of times by a welding apparatus where the orientation of the collar and neck portion varies as the weld is completed where the vessel has at least two sheets of material to be welded together at edges to form the vessel and where excess material is removed from the neck portion prior to welding the collar. However, Jouillat as described and taught above does in fact teach a spray dispenser assembly that has a collar and neck portion that are welded together (Column 4 Line 30 – Column 6, Line 10). It would have been obvious to one having ordinary skill in that art at the time the present invention was made to weld the neck and collar arrangement of Kock et al. with the welding process of Jouillat, in order to provide for an advantageous way of attaching two similar materials

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to ensure a proper seal occurs for liquids that must be maintained in a clean state for sanitary reasons.

In regard to Claim 44, Kock et al. in combination with Jouillat will perform the methods as recited in Claim 44, during normal operational manufacturing of the device, the method of making the device is therefore inherent in making the apparatus.

### ***Response to Arguments***

#### **Rejection under 35 USC § 112**

Applicant's arguments, see page 9 , filed 06.11/2007, with respect to Claim 41 have been fully considered and are persuasive. The rejection of Claim 1 held under 35 U.S.C. § 112 Second Paragraph has been withdrawn in view of Applicant's amendment that deletes the limitations "a conventional pump dispenser trigger" and presents claim language that better ascertains the scope of the invention.

#### **Rejection under 35 USC § 102**

Applicant's arguments, see page 10, filed 06/11/2007, with respect to the rejection(s) of claim(s) 24-27 and 32-41 held under 35 U.S.C. § 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kock et al. (US 5,377,875).

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**Rejection under 35 USC § 103**

Applicant's arguments filed 06/11/2007 have been fully considered but they are not persuasive. Kock et al. fails to teach where the bag is made of two sheets. However, Applicant does not specify that making the bag of two plastic sheets provides any particular benefit to the present invention and is not for any particular purpose or solves a stated problem. The selection of a bag made of two plastic sheets with a seam is a mere obvious design choice. As such, it would have been obvious to one having ordinary skill in the art. Furthermore, a two plastic sheets as opposed to one piece bag.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trevor McGraw whose telephone number is (571) 272-7375. The examiner can normally be reached on Monday-Friday (2nd & 4th Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Trevor McGraw  
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TEM

KEVIN SHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700